

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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subject: Discounted Casino Markers

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

**LEGEND**

Casino =  
A =  
B =

**ISSUES**

- 1) How much income does Casino realize when a customer gambles, and loses, using a prenegotiated discounted marker?
- 2) May Casino deduct, at the time the customer settles its marker, subsequent discounts made to preserve and retain the customer's continued patronage as a loss under § 165 of the Internal Revenue Code?

## CONCLUSIONS

- 1) The discounted amount of the marker, or net sales price, is the actual price paid by the customer for Casino's services, and Casino realizes only the discounted amount in income.
- 2) Casino may deduct as a loss under § 165 subsequent discounts made to preserve and retain the customer's continued patronage at the time the customer settles his marker.

## FACTS

Casino owns and operates a licensed gambling casino and, for federal income tax purposes, computes its income using an overall accrual method of accounting. In connection with its gambling operations, Casino routinely extends lines of credit to its premium players (hereinafter "customers") to encourage their continued patronage and to promote gambling at its facilities. Before extending credit, Casino reviews a customer's credit worthiness. At the time the credit is extended, the customer signs a promissory note payable to Casino, commonly referred to as a "marker." The marker generally is dated; states the customer's name, his bank's name, location, and account number; and contains the customer's instruction to its bank to pay Casino the amount of the credit extended to the customer. After the customer signs the marker, he may exchange it for gaming chips to gamble at Casino. When the customer finishes gambling, he is expected to settle (pay, as explained below) the discounted amount of his marker.

Most casinos compete with each other to obtain customers' business. One method Casino uses to attract customers' business is a "marker discount." A marker discount is a prearranged agreement between Casino and a customer, whereby Casino agrees to accept less than the face amount of the marker if the customer loses. The amount of the discount is a fixed percentage of the customer's losses. The customer must sign the marker for the full amount of the credit despite the written discount agreement. If the customer wins, he must pay the full face amount of the marker.

Casino documents its marker discounts before gaming begins through a written agreement with the customer called a Summary of Terms. The summary provides that Casino "will agree to the following terms if the guest provides the return performance requested." The summary specifies the customer's credit limit, whether the customer is required to put up money in advance, the discount percentage which ranges from A% to B% depending on the amount of the anticipated loss, and any other allowances or incentives provided to the customer. The summary goes on to state that "[u]nder no circumstances will there be an agreement for a discount unless the patron pays in full the amount not subject to the potential discount."

When a credit marker is settled for less than the full face amount, Casino prepares a Discount Authorization Form required by the Nevada Gaming Control Board. The form is used to authorize all discounts from the credit marker held by Casino, including discounts authorized prior to or during play, as well as post-play discounts authorized to maintain customer goodwill and to facilitate collection of any non-discounted portion. Like the Summary of Terms described above, the Discount Authorization Form states that Casino “will agree to the following discount if the patron provides the return performance requested” and “[u]nder no circumstance will there be an agreement for a discount unless the patron pays in full the amount not subject to the potential discount.” Casino and the customer agree to these terms when they sign the Form.

The discounts are subject to re-negotiation after play has completed until the customer eventually settles with Casino. However, Casino has the legal right to enforce the full face amount of the marker until the customer settles the marker. If a customer defaults on payment of a marker, Casino can turn the marker over to the local district attorney’s office for prosecution.

For financial accounting purposes, Casino includes the undiscounted amount of its gambling winnings in gross revenues.

### LAW AND ANALYSIS

Section 61 provides that gross income includes all income from whatever source derived. In Pittsburgh Milk Co. v. Commissioner, 26 T.C. 707 (1956), acq. 1962-2 C.B. 5, the Tax Court found that allowances were part of the sales transaction and concluded that gross income must be computed on the net agreed price for which the milk was actually sold. Thus, under Pittsburgh Milk, where the purpose and intent of the parties is to reach an agreed net sales price, the allowance is properly viewed as an adjustment to the purchase price that reduces gross sales in determining gross income. See also Rev. Rul. 82-149, 1982-2 C.B. 56.

In the instant case, Casino agrees to the discount to provide an incentive for the customer to gamble at Casino and to retain the customer’s business. The discount is negotiated before the customer commences play. As in Pittsburgh Milk, the purpose and intent of the parties is to reach an agreed net sales price. Therefore, the discounted amount (the net sales price) is the actual agreed price for the gambling services, and Casino is required to include only the discounted amount in gross income.

The possibility that Casino may attempt to collect the full amount of the marker if the customer fails to pay the agreed, discounted price does not change the (discounted) net sales price. Casino’s allowance of the discount depends merely upon the customer incurring a gambling loss and not some later event. If Casino later collects an amount greater than the discounted amount, Casino must include the difference in gross income.

Occasionally, Casino will further discount a customer's marker after the customer has completed play in order to preserve and retain the customer's continued patronage. Unlike the prenegotiated discount, this subsequent discount was not made by the parties with the intent of reaching an agreed upon net sales price. The net sales price, unreduced by the subsequent discount, is includible in Casino's income, and Casino is entitled to a deduction under § 165 for the amount subsequently forgiven at the time the customer settles its marker. See Lab Estates, Inc. v. Commissioner, 13 T.C. 811 (1949), acq., 1950-1 C.B. 3 (landlord, in order to retain tenants, forgave unpaid rent previously included in income; court held the amounts forgiven are deductible as business expenses or as losses).

When a customer gambles and loses using a prenegotiated discounted marker, the discounted amount is the actual price (net sales price) for the services, and Casino is required to include only the discounted amount in gross income. For subsequent discounts made to preserve and retain a customer's continued patronage, Casino is entitled to a deduction under § 165 for the amount forgiven at the time the customer settles its marker.

This memorandum does not address situations in which Casino discounts a marker after play due to (1) considerations of worthlessness and collectability, or (2) disputed liability.

#### CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Justin G. Meeks at (202) 622-5020 if you have any further questions.